

# Exhibit 7

M5Q6OWEC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 MARK OWEN, et al.,

4 Plaintiffs,

5 v.

19 CV 5462 (GHW)  
Teleconference

6 ELASTOS FOUNDATION, et al.,

7 Defendants.

8 -----x

New York, N.Y.  
May 26, 2022  
2:00 p.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

13 APPEARANCES

14 BLEICHMAR FONTI & AULD LLP  
15 Attorneys for Plaintiffs  
16 BY: BENJAMIN F. BURRY  
JAVIER BLEICHMAR

17 PAUL HASTINGS LLP  
18 Attorneys for Defendants  
19 BY: ZACHARY ZWILLINGER  
KENNETH P. HERZINGER

M5Q6OWEC

1 THE COURT: Let me begin by taking appearances from  
2 the parties.

3 What I'd like to do is to ask the principal  
4 spokesperson for each to identify herself and the members of  
5 her team rather than having each lawyer introduce themselves.

6 Let me begin with counsel for plaintiff. Who's on the  
7 line for plaintiff?

8 MR. BURRY: Good afternoon, your Honor.

9 This is Benjamin Burry, and with me is  
10 Javier Bleichmar.

11 THE COURT: Thank you. And who's on the line for  
12 defendants?

13 MR. HERZINGER: Good afternoon, your Honor.

14 This is Ken Herzinger, and with me is Zach Zwillinger,  
15 and Mr. Zwillinger is going to be doing the speaking on our  
16 end, so I'll hand it off to him at this point.

17 THE COURT: Very good. Thank you very much.

18 So before we begin with the substance of today's  
19 proceeding, I'd like to just lay out some rules for the parties  
20 with respect to their conduct during the conference.

21 The first thing I would like to do is remind you this  
22 is a public proceeding. Any member of the public or press is  
23 welcome to dial in and audit the conference. I'm not currently  
24 monitoring whether third parties are monitoring the call.

25 Second, please keep the devices on mute at all times

M5Q6OWEC

1 except when you are speaking to me or the representative of a  
2 party.

3 Third, please state your name each time that you  
4 speak.

5 Fourth, please abide by instructions from our court  
6 reporter that are designed to help her do her job.

7 And, finally, I'm ordering that there be no recording  
8 or rebroadcast of all or any portion of today's conference.

9 So, counsel, with all of that out of the way, let me  
10 turn to the substance of today's proceeding. I scheduled this  
11 to discuss the issues raised in the parties' letter that was  
12 submitted to me with respect to a dispute regarding Chinese  
13 law.

14 Counsel, I have reviewed the parties' letter. I look  
15 forward to hearing from each of you. Let me say at the outset  
16 that it appears likely that given the nature of the issues  
17 presented here that this will be an issue that requires more  
18 complete briefing and presentation of additional information in  
19 order to resolve it. That's my expectation coming in, in large  
20 part because of the burden on the party resisting discovery on  
21 the basis of foreign law to show proof, the nature of those  
22 restraints. That said, it will be helpful for me to hear from  
23 you about the grounds for the motion and any opposition to it.

24 But I just wanted to frame the conversation on that  
25 expectation now going in, namely it is not apparent to me that

M5Q6OWEC

1 I'm going to be able to resolve it during the course of the  
2 conference. It is not my preference – and my preference would  
3 be to resolve it here, and the basis of your letter, it's just  
4 not apparent to me that in this instance that is practicable.

5 So let me hear first from counsel for plaintiff. What  
6 would you like to tell me about the anticipated motion to  
7 compel?

8 MR. BURRY: Thank you, your Honor. This is  
9 Benjamin Burry.

10 This is just one issue. There's really one issue  
11 before the Court, which is, can defendants use China's Personal  
12 Information Protection Law, the PIPL, to block discovery of  
13 documents that they're required to produce under the Federal  
14 Rules of Civil Procedure, and we submit based on clear  
15 universal precedent that the answer is no. We're asking the  
16 Court to rule that China's PIPL does not trump the federal  
17 rules.

18 Just like every other defendant in U.S. litigation,  
19 Chinese defendants must produce the responsive documents in  
20 their possession, custody, and control, regardless of whether  
21 their witnesses want to provide consent to the production to  
22 plaintiff. And, specifically, we're also asking the Court to  
23 order defendants to produce the Elastos business documents that  
24 they're withholding based on Chinese law, which we know  
25 includes Google e-mail and Google Drive data for custodians

M5Q6OWEC

1 like Hao Cheng and Dinghe Hu, which is located in the  
2 United States, as well as documents for U.S. residents like  
3 Fay Li, Kevin Zhang, and Clarence Liu.

4 The defendants are relying on this PIPL to justify  
5 holding two types of documents; first, the documents located in  
6 China; and second, documents located anywhere in the world,  
7 including the U.S., if they concern a witness who's located in  
8 China.

9 And the effect on this case is significant because  
10 this implicates, according to defendants, all of the initial  
11 custodians that the parties have agreed to, all 19 custodians.  
12 In defendants' view, they only need to produce these documents  
13 if all the individuals involved provide express written consent  
14 to the production of plaintiffs. And in defendants' view, they  
15 do not and cannot even access or review these documents or  
16 provide us any kind of log as to their volume or contents.  
17 They're saying the documents, under the PIPL, are just  
18 completely immune from discovery. So, in effect, what they're  
19 asking for is that every defense witness has a unilateral right  
20 to refuse document discovery or the parts of document discovery  
21 they don't like, and there's nothing the plaintiffs can do to  
22 challenge it.

23 So here, specifically, there's 19 initial agreed-upon  
24 custodians, and these custodians were not just picked out of  
25 thin air; these are all current or former executives or workers

M5Q6OWEC

1 for defendant Elastos, and they're all individual defendants  
2 identified in their initial disclosures as having discoverable  
3 information relevant to the case.

4 And so as defendants purport in the joint letter of  
5 the 19, there are four that apparently have provided no consent  
6 at all. So that's over 20 percent of the initial custodians  
7 are just entirely prohibited from document discovery. That  
8 includes all their e-mail, company e-mail, all their records.

9 And then with respect to the remaining 15, what the  
10 defendants purport is that there's "varying level of consent."  
11 And what that means to us is that these individuals, in private  
12 discussions with defense counsel, decide to pick and choose  
13 which documents they want to produce. So maybe they wanted to  
14 produce files in their computers but they didn't want to  
15 produce e-mails, or maybe they're producing a certain e-mail  
16 account but not others, or they don't want to produce text  
17 messages.

18 We've asked for them to give us copies of these  
19 consent requests they sent, the responses they received from  
20 these witnesses, what these private conversations they had with  
21 these witnesses were that led to them to selectively deciding  
22 to produce certain documents and not others, we've asked for a  
23 log of what they're withholding, and we've asked them to  
24 articulate the basis for saying that certain documents are  
25 inaccessible in China and witnesses are located solely in

M5Q6OWEC

1 China, and they refused in every respect, which we think just  
2 illustrates the complete discretion that they have under their  
3 view of the PIPL and how what they're proposing would just  
4 completely upend the Federal Rules of Civil Procedure. And we  
5 think this is pretty straightforward. The precedent  
6 universally rejects these kinds of special privileges for  
7 litigants as an infringement upon the sovereignty of the  
8 United States.

9 The general matter of foreign data privacy laws are  
10 not grounds to withhold responses to discovery. That's  
11 especially true in cases where there's a protective order in  
12 place like here, and where defendants fail to cite an instance  
13 where the foreign government has taken any adverse action from  
14 complying with discovery rules of the United States.

15 In the letter we submitted, the joint letter, we cite,  
16 for example, a UK data privacy case, EU GDPR case, a Korean  
17 data privacy law case. What the defendants are asking for here  
18 goes much, much further. They want to block production of all  
19 documents to certain employees and then permit their employees  
20 to pick and choose which business documents these want to  
21 withhold or produce in their discussions.

22 The two courts that have considered the PIPL  
23 specifically have resoundingly held that it's inapplicable and  
24 is not grounds for defendants to withhold discovery in U.S.  
25 litigation. That's the *Philips* case in the Northern District



M5Q6OWEC

1 of Illinois and the *Valsartan* case in the District of  
2 New Jersey.

3 Both those cases strongly emphasize that if this  
4 Chinese law took precedence, it would profoundly undermine U.S.  
5 sovereignty and create an extraordinary and unfair advantage  
6 for Chinese litigants in U.S. courts. They say that Chinese  
7 defendants cannot enter into a U.S. market and be shielded from  
8 unfavorable discovery. And they say if you don't like the  
9 rules, stop doing business in the United States.

10 So, in sum, we think this is -- I understand, your  
11 Honor expects there to be briefing, and we don't object to  
12 that. We do submit it's very straightforward, and the  
13 defendants have cited no legal authority whatsoever that would  
14 allow the Court to subordinate the Federal Rules of Civil  
15 Procedure to this Chinese blocking statute. What they are  
16 asking for is totally unprecedented.

17 And we respectfully submit that what's in the letter  
18 is what would be in the brief, and there's not going to be much  
19 more to add. The Court should order just like all other  
20 defendants in federal court, these defendants have to produce  
21 the responsive documents in their possession, custody, and  
22 control regardless of whether their witnesses want to provide  
23 written consent.

24 Thank you.

25 THE COURT: Thank you, counsel.

M5Q6OWEC

1           Let me ask you: Is it that straightforward? Aren't  
2       there a number of considerations that I have to take into  
3       account in order to determine whether or not to order the  
4       production of this information, notwithstanding foreign  
5       restriction? The way you're arguing, it sounds as though that  
6       the rule is that if there's a foreign rule that impedes fall  
7       litigation, that foreign rule is automatically overturned. I  
8       don't know if that's the case.

9           And this is relevant with respect to the briefing, to  
10      the extent that you're planning to brief it as you proposed it,  
11      that's part of your understanding as you described it; that's  
12      not, rather, that the Court has to undertake a comity analysis,  
13      evaluating a number of specific factors as outlined by the  
14      circuit in cases such as the *Lindie* case. So, counsel for  
15      plaintiff, is the rule as you describe it -- namely that any  
16      foreign constraint is automatically overcome by the federal  
17      rules -- or is there more for the Court to consider in order to  
18      evaluate the issue?

19           MR. BURRY: Yes. Thank you for the question.

20           So that is not our expression of the rule, that the  
21      foreign law always is subordinate. There is a comity analysis.  
22      It's performed -- the Second Circuit has a seven-factor  
23      analysis, but that does not apply here because following the  
24      *Philips* case, for example, we don't even get there. To get to  
25      the comity analysis, the defendants bear the burden. The

M5Q6OWEC

1 defendants are the ones positing this blocking statute as the  
2 grounds to resist discovery. They have the burden to show that  
3 this blocking statute applies to responsive discovery in the  
4 case.

5 And so what the *Philips* court explained is that  
6 because this kind of argument under the PIPL results in them  
7 not actually identifying any responsive documents for which  
8 production is affected by Chinese law, they haven't met their  
9 burden to specifically and with particularity demonstrate the  
10 application to foreign law.

11 Put differently, the way in which they're asserting  
12 this foreign law actually precludes an ordinary comity  
13 analysis, and they don't get there. And so like the *Philips*  
14 court, this Court can reject it -- or must reject it -- without  
15 undertaking the comity analysis.

16 THE COURT: Thank you.

17 Counsel for defendants in their portion of the letter  
18 suggests that the Court should take up the motion after  
19 additional documents have been presented to you. I just want  
20 to ask you about that suggestion -- again, mindful of the factor  
21 the Court would have to consider engaging in the comity  
22 analysis, which includes, of importancy, litigation of the  
23 documents requested and availability of other alternative means  
24 of securing the information and the other factors of which  
25 you're aware. To what extent would the kind of delay in

M5Q6OWEC

1 seeking this motion impact your ability to provide the Court  
2 with information going to those factors?

3 Counsel, if you're on mute, you can take yourself off  
4 mute.

5 MR. BURRY: Oh, was that for me, for plaintiffs, your  
6 Honor?

7 THE COURT: Yes.

8 MR. BURRY: Yes. So that's exactly right. The first  
9 factor, for example, is the importance of documents and  
10 information to the litigation. Because defendants are refusing  
11 to provide any kind of accounting or log for what these  
12 documents are, that illustrates exactly why the *Philips* court  
13 ruled that we don't even get there. How can the Court possibly  
14 have examined the first of the seven factors when defendants  
15 are refusing to identify what these documents are. How could  
16 the Court possibly assess the importance of them?

17 THE COURT: Thank you. Good.

18 Anything else, counsel for plaintiffs?

19 MR. BURRY: No, your Honor. I'm happy to answer any  
20 further questions, but I think that encapsulates where we are  
21 and where we're coming from.

22 THE COURT: Thank you very much.

23 Let me turn back to counsel for defendants. Counsel,  
24 as I introduced at the outset of this conversation, given the  
25 burden here, I suspect I'll probably need more from you than

M5Q6OWEC

1 what's provided in the letter in order to evaluate this issue,  
2 but let me hear from you.

3 Why is it that you believe that what's been provided,  
4 or is expected to be provided, is sufficient? And more  
5 significantly, what do you expect to put in front of me to show  
6 that the PIPL bars disclosure? And what will I have available  
7 to me in order to evaluate the factors articulated by the  
8 circuit, having heard counsel's arguments about *Philip*?

9 Counsel?

10 MR. ZWILLINGER: Yes, your Honor. This is  
11 Zachary Zwillinger from Paul Hastings for defendant.

12 First, I just want to echo the Court's belief that  
13 this is something that will need to be decided on full  
14 briefing.

15 As the Court may be aware, the PIPL is only six months  
16 old. As a result, there really is no case law interpreting the  
17 case law that is cited by plaintiffs, do not speak to the  
18 consent requirement that pervades the PIPL. As a result, they  
19 speak not at all to the issues that are going to be before this  
20 Court.

21 In terms of the materials that we would put in front  
22 of your Honor on a full motion to dismiss -- motion to compel  
23 brief opposition, we would anticipate providing foreign law  
24 affidavits from experts on Chinese law as well as the language  
25 of the PIPL itself.

M5Q6OWEC

1           We believe that the PIPL, the language, while it's --  
2       first, it is written in Chinese, but it's not written  
3       necessarily as a U.S. statute would be written. But it's  
4       pretty clear on its face that consent is a requirement before  
5       we as defendants are even allowed to collect documents, and  
6       that really is the issue here.

7           We want to emphasize to the Court that defendant  
8       Elastos is not trying to hide behind any sort of Chinese law.  
9       We've done everything in our power to collect as my documents  
10      as plaintiff has requested. I think that's clear from the  
11      submission that we've provided to the Court.

12          So the PIPL, in a number of different articles,  
13      requires that we get express written, voluntary consent without  
14      coercion. So what we did is we hired a PRC law firm. We  
15      worked with that law firm to develop a consent form that asked  
16      each of the custodians that plaintiffs have raised to provide  
17      us with access to all of their possible documents that could  
18      have relevant Elastos litigation related material.

19          And the consents that we put together were quite  
20      broad. We asked not only for their consent to collect any data  
21      they have at Elastos itself, but any data they have in their  
22      personal e-mails, their devices, in social media, in hard copy,  
23      and we also had a catchall asking for whatever other sources of  
24      data. So we sent these consent requests to pretty much anyone  
25      that we possibly could. And for the folks that we weren't able

M5Q6OWEC

1 to contact, there was only one, I believe, where we couldn't  
2 obtain any sort of contact information. So we've done  
3 extensive diligence to try and reach out to as many people as  
4 we could to get their consent. And those efforts have born  
5 significant fruit.

6 So in the collection that we've done, we've now  
7 assembled over 800,000 documents that concern 17 of the 19  
8 custodians. And, certainly, all of the custodians, or almost  
9 all the custodians that are actually relevant in this action,  
10 we are in the process of reviewing and producing them. We have  
11 already produced about 48,000 documents, and we anticipate  
12 making another substantial production shortly.

13 The review that we've undertaken has come as a result  
14 of search terms, which hit over 300,000 documents. And our  
15 review is using a very liberal review standard so that we're  
16 not trying to split hairs in determines of what we're producing  
17 to plaintiffs.

18 The idea I want to leave with your Court is we're  
19 doing everything we can to both adhere to our obligations under  
20 the federal rules and also adhere to the PIPL. And as your  
21 Court recognized, once we've established that the PIPL is a  
22 blocking statute and thus it is illegal for us to collect  
23 documents without the prior consent of the custodian, the Court  
24 will need to turn to the seven-factor analysis. And we believe  
25 that this case, unlike some of the other cases that are cited

M5Q6OWEC

1 by plaintiffs in their submission, the factors really go  
2 against plaintiff in this case.

3 THE COURT: Thank you.

4 Counsel, before we move on to that, let me ask -- and  
5 I apologize. I look forward to learning more as briefing is  
6 presented to me. I've looked at some of the cases, including  
7 the *Philips* case and the *Valsartan* case. The first thing I'm  
8 curious to learn more in your briefing is -- and to the extent  
9 you're not prepared to answer these questions, please feel free  
10 to tell me. It's not a problem. I'm happy to wait.

11 I note from those cases that the PIPL broadly defines  
12 personal information as all kinds of information recorded by  
13 electronic or other means related to identified or identifiable  
14 persons...close quote. The thing I'm curious about is whether  
15 that term touches what I'll describe as business records as  
16 opposed to what we in the U.S. would think of as personal  
17 information, like PII, which is personal to the individual.  
18 Can you respond to that?

19 And part of the reason why I'm curious is I don't  
20 understand, I don't know yet, how it is that these records are  
21 custodied, and why it is that the business records of Elastos  
22 may be, I'll call it, mixed with this personal information. Do  
23 you know? Can you help?

24 MR. ZWILLINGER: Yes, your Honor.

25 So as I think your Honor recognizes the definition of



M5Q6OWEC

1 personal information in Article 4 of the PIPL is very broad.  
2 And it is our understanding that would include things like  
3 names and addresses and contact information and many other  
4 categories of personal information that may not be considered  
5 say PAI -- PII in the U.S.

6 But the sort of prior issue is that in light of how  
7 the PIPL defines personal information handling in Article 4 to  
8 include collection of data, that means that in light of  
9 Article 4 and the other provisions, we're not able to collect  
10 the data before we're able to analyze it to view what is, in  
11 fact, in it without obtaining the consent of the custodian of  
12 the documents.

13 And so while some of the data that is at issue is in  
14 the possession -- clearly in the possession, custody, and  
15 control of Elastos, much of it is also in the possession of the  
16 custodians themselves on their personal devices or maybe on  
17 their own personal accounts.

18 So the prior issue is that we don't have consent to  
19 collect the data, and thus, we don't have the ability to see  
20 exactly what is personal information versus not. To the  
21 extent --

22 THE COURT: I am sorry. Can I just ask this: Out of  
23 curiosity, to the extent that the information is on  
24 individual's personal phones, I understand the argument that  
25 there's a limitation on collecting the information because it

M5Q6OWEC

1 may include personal information, and the bar on collection may  
2 be an impediment to collection of information to the extent  
3 that part of that information is personal information.

4 Does this bar on collection of information apply at  
5 all with respect to information that is, to the extent that  
6 there's information on Elastos' computer system -- in other  
7 words, are you collecting it, if you're pulling it off of a  
8 server controlled by the company?

9 MR. ZWILLINGER: Yes. So the consent requirement  
10 applies equally to data that's both on Elastos servers as well  
11 as in the actual possession, custody, and control of the  
12 custodian. So there isn't a distinction there because  
13 information that's at, say, Elastos servers will have personal  
14 information of individuals and custodians themselves and others  
15 that we can't access until we get the consents from the  
16 custodians themselves.

17 THE COURT: Can I expand on that? In fact, and this  
18 is not a question about the definition of "personal  
19 information," it's a question about the definition of  
20 "collect." Is pulling information from the company's own  
21 servers collecting information under the statute?

22 MR. ZWILLINGER: It is, yes. Because the collection  
23 process is not the collection for the use for business  
24 purposes, but in this context it's for the -- so it can be  
25 reviewed and provided in a litigation outside of the borders of

M5Q6OWEC

1 China.

2 So the reason why we're not able to access the data  
3 that's on Elastos' servers for production purposes is because  
4 to collect that for review and production, that is to -- and  
5 this is in the context of collection in the normal U.S.  
6 discovery context. As you might imagine, counsel for Elastos  
7 has hired a third-party vendor to collect data from its server  
8 so it can be processed and put in a format that's reviewable by  
9 Elastos' counsel, both for litigation purposes and for adhering  
10 to Chinese law, and that particular collection is subject to  
11 the consent requirement under the PIPL.

12 Clearly, the data that is on Elastos' servers is in  
13 the possession, custody, or control of Elastos at all times,  
14 but we're not able to collect it for production purposes until  
15 we get the consent from the custodians because the collection  
16 of the information is of a different form.

17 THE COURT: Interesting. Thank you. I apologize. I  
18 interrupted you. You were about to discuss the comity  
19 analysis.

20 MR. ZWILLINGER: Yes. So as your Honor recognized,  
21 there's sort of two steps to the analysis. First is that there  
22 needs to be established that the foreign statute at issue is,  
23 in fact, a blocking statute, and we submit that it's pretty  
24 clear that the PIPL is a blocking statute and that it does  
25 inhibit Elastos' ability to collect and produce documents in

M5Q6OWEC

1 this litigation. So once we get -- and we'll submit, I  
2 believe, foreign law affidavits and other materials in support  
3 of that position, but I don't think that's going to be the  
4 difficult question for this Court. Instead, the difficult  
5 question is going to be the balancing of the seven factors  
6 because it's a very case-by-case, fact-intensive analysis, and  
7 it really depends on the circumstances at issue.

8 So, as an example, as your Honor recognized, the first  
9 factor is whether or not the documents are, in fact, important.  
10 And the cases that that plaintiff themselves cite note that  
11 when documents aren't outcome determinative or if they are  
12 cumulative, they don't need to be produced; and thus, there's  
13 no reason for the Court to force a producing party to violate  
14 foreign law when it's really not necessary. Likewise, the  
15 *Mercedes-Benz* case, which is also cited by plaintiff,  
16 recognizes that documents that are going to be subject to such  
17 an order really need to be directly relevant.

18 The second factor about whether plaintiffs' requests  
19 are specific, I think it's clear that they're not specific. As  
20 your Honor may have seen from the cases, often the documents at  
21 issue are very, very narrowly and clearly identified.

22 In one of the cases -- I believe it's the *Valsartan*  
23 case -- the whole dispute focused on 23 specific documents. In  
24 the *Fenerjian* case, the Korean PIPA case, it was just about  
25 three individuals.

M5Q6OWEC

1           So the information was very specific. It was clearly  
2     important and clearly relevant; whereas here, plaintiff had  
3     made no showing that the documents that they aren't going to be  
4     receiving because of the PIPL are at all relevant to this case  
5     or that the documents they will be receiving from defendants,  
6     what they could receive through third-party subpoenas, through  
7     other processes, what's public, why that isn't more than enough  
8     for this litigation.

9           You know, this is not a traditional securities class  
10    action like a 10b-5 or Section 11 action where the loss of  
11    internal documents are necessary to litigate the case. This is  
12    a sort of a different class action relating to whether or not  
13    the tokens are securities under the Howey Test or whether  
14    there's an exemption. So it just doesn't lend itself to the  
15    sort of broad based discovery that you would see in a normal  
16    class action.

17          We submit the documents we have produced and will  
18    produce after completing our review will be more than  
19    sufficient for plaintiffs' purposes. And to that point, that's  
20    why in our submission we noted that we thought this whole  
21    dispute was premature, because plaintiff hadn't had the  
22    opportunity to look at the documents that they are receiving  
23    and determine whether or not these other small pockets of data  
24    that they're not receiving are, in fact, so important and so  
25    relevant that they need an order from the Court forcing us to

M5Q6OWEC

1 violate Chinese law.

2           You know, I think the Court should be reluctant to do  
3 that in a case where there really isn't a real showing that  
4 it's necessary. In some cases, it may be such that such an  
5 order is appropriate, and I think some of the cases cited by  
6 plaintiff demonstrate that. But that is clearly not the case  
7 here. When they're receiving so much, they can access so much  
8 through either public means or Rule 45 subpoenas or elsewhere.  
9 We believe that's more than enough to satisfy our obligations  
10 under the federal rules and more than enough for plaintiff to  
11 make their claims against defendants.

12           THE COURT: Thanks very much, counsel. Let me turn  
13 back to counsel for plaintiff.

14           Just on the counsel's last point following up on our  
15 conversation from earlier, they are arguing that we will get  
16 past what you described as step one and engage in the comity  
17 analysis, at which point if the motion is briefed before the  
18 production that is anticipated has been completed, they suggest  
19 the lack of information regarding the nature of the documents  
20 that have not been provided will weigh against plaintiff in the  
21 Court's assessment of those factors.

22           So I want to come back to you, counsel for plaintiff.  
23 This just comes to the issue of timing for briefing your motion  
24 to compel. And just to put it very bluntly, the question, in  
25 part, is whether or not you feel very confident that you

M5Q6OWEC

1 wouldn't need to get into the comity factors such that the  
2 additional information that might be provided to you through  
3 disclosure of discovery would be useful in briefing the motion.

4 So the question for you, counsel for plaintiff, having  
5 heard everything that we just talked about, what is your  
6 proposal regarding timing for filing of your motion?

7 MR. BURRY: Your Honor, this is Benjamin Burry for  
8 plaintiffs. We're prepared to -- if your Honor wants briefing,  
9 we think it should be submitted right away. I would submit we  
10 could file a brief -- maybe seven pages is appropriate for a  
11 brief and a response of five pages for reply.

12 THE COURT: I'm sorry. That's wildly wrong in terms  
13 of the page limit. I think you may misunderstand the nature of  
14 the issue represented here.

15 I'm being asked to evaluate a complex, novel issue of  
16 Chinese law and then to engage in a complex balancing test. I  
17 don't expect that there's any reasonable way for that to be  
18 presented to me in 19 federal pages of briefing. That's  
19 implausible.

20 If you want to limit your briefing to seven pages,  
21 that is, of course, entirely up to you. But I do not expect  
22 that I'm going to set page limits anywhere near that limit  
23 because this is a more complex and novel issue than I think can  
24 be properly presented to me in a total of 19 pages of briefing.

25 So, again, counsel, I'm happy for you to file seven

M5Q6OWEC

1 pages if you think that would be persuasive. That's up to you.  
2 But in terms of setting the briefing schedule, my expectation  
3 is that the issues presented here are more substantial than  
4 that kind of briefing structure seems to suggest you believe it  
5 is. So I'm happy to entertain the structure, but you should  
6 know I expect I'll see substantially more from defendants, as  
7 you heard.

8 If you want me to limit your reply to that, to set  
9 five pages, I am happy to, if that is your real proposal,  
10 counsel for plaintiff. I'm happy to adopt a structure in which  
11 your moving papers are seven pages and your reply is five  
12 pages. But you have heard what defendant is going to put in  
13 front of me; we both know that's going to be a lot more than  
14 seven pages.

15 So, counsel for plaintiff, is that what you're asking  
16 for, for me to cap your brief at seven pages and your reply at  
17 five pages, notwithstanding the volume of issues defendant is  
18 going to present to me in their opposition?

19 MR. BERRY: We are not asking for that, your Honor.

20 THE COURT: Thank you. So why did you float that in  
21 the first instance?

22 MR. BERRY: Well, if I could -- so you heard counsel  
23 for defendants explain they'd like to submit foreign law  
24 affidavits on the issue of express consent being required under  
25 the PIPL. We think that's unnecessary because we've taken that



M5Q6OWEC

1     assertion of theirs for granted. There's no reason to have the  
2     back-and-forth on experts when there's no dispute as to what  
3     the PIPL provides. What our argument is, assuming they're  
4     interpretation of the PIPL, that is not grounds to upend the  
5     Federal Rules of Civil Procedure.

6             THE COURT: Thank you. Fine.

7             So, counsel, I take it from your proposal, counsel for  
8     plaintiff, that being fully aware of the nature of the issues  
9     to be presented here and the nature of the decision the Court  
10    is going to make, your proposal is that I order that your  
11    initial brief be filed on June 2; is that right?

12            MR. BURRY: Yes, your Honor. We think that timing is  
13    appropriate. And your question about whether a further  
14    production would be helpful, we do not think it would.  
15    Defendants counsel talk --

16            THE COURT: Thank you. That's fine.

17            So, counsel for defendants, the plaintiffs' motion  
18    will be filed by June 2. How much time would you like to  
19    request for your opposition?

20            MR. ZWILLINGER: So we recognize that plaintiff is no  
21    longer disputing that the PIPL is a blocking statute, and so in  
22    some way that analysis goes away and we don't need to address  
23    it. So we certainly won't need as much in support of our  
24    argument as we did prior to that recognition.

25            I would still say we need sufficient pages and time to

M5Q6OWEC

1 develop our balancing analysis. And I do think that the  
2 production that we hope to make in the coming weeks will be  
3 illustrative of how unnecessary an order from this Court will  
4 be. So I would ask for maybe an opposition deadline of June 16  
5 or 17. That would give us two weeks or two weeks and a day. I  
6 believe that would be enough to both cover any productions that  
7 we are going to be making in the coming weeks and also to  
8 address plaintiffs' argument on the motion. Of course, that is  
9 my proposal at this point. I believe the opposition deadline  
10 of June 17th is preferred.

11 THE COURT: Thank you. Let me just make sure that we  
12 have clarity on one point.

13 Counsel for plaintiff has made a couple of statements  
14 during this conference that that is far from, what I'll call  
15 it, a formal stipulation regarding the extent of and coverage  
16 of Chinese law. The Court will need to make a determination  
17 regarding what the law is and does. To the extent that the  
18 parties can formalize a stipulation or agreement regarding the  
19 nature and extent of Chinese law and its application here, then  
20 I'm happy to consider it. I'm a little concerned about too  
21 much weight being placed on what may be a thoughtful but  
22 perhaps not fully developed concession during a conference.  
23 Even if it is a full concession that the law is what the  
24 defendants say it is, which is not what I heard, I still have  
25 to make the relevant determinations in order to get to what the

M5Q6OWEC

1 parties have described as Stage 2.

2           So, counsel, I'm going to invite you to work together  
3 to develop a more fulsome stipulation regarding the parties'  
4 agreement as to the terms and meaning of Chinese law and its  
5 applicability here in all of the relevant circumstances. If  
6 the parties cannot reach a stipulation regarding the nature and  
7 extent of the relevant Chinese law as well as its application,  
8 it may be that counsel's hope that expert affidavits could be  
9 avoided here will not come to roost. In other words, I want  
10 the parties to actually make concrete the possible stipulation  
11 around which you circled and suggested here, and if you're not  
12 able to reach a very complete and comprehensive stipulation  
13 regarding the meaning, extent, and impact of Chinese law, I  
14 don't think that I would expect that the defendants would  
15 proceed in the absence of the kind of expert affidavits that  
16 we've discussed, and that might affect our schedule.

17           So I'm going to set a schedule that's predicated on  
18 the parties actually reaching a full stipulation on the nature,  
19 extent, and effects of Chinese law and its impact here. That  
20 will be a threshold issue.

21           Assuming you're able to do that, I expect the schedule  
22 the parties proposed is reasonable; namely the motion itself  
23 would be filed by the 2nd, any opposition would be filed by the  
24 17th, and any reply would be filed by the 24th of July.

25           You should obviously meet and confer regarding the

M5Q6OWEC

1 nature of the parties' agreement regarding the scope, extent,  
2 and the effect of Chinese law promptly. If you are unable to  
3 reach a complete and comprehensive agreement regarding the  
4 meaning, extent, and effect of that law, then I would ask for  
5 you to write me to request an appropriate adjournment in the  
6 schedule so the appropriate information can be presented to the  
7 Court that would allow me to make a ruling in the case.

8 So, again, I appreciate the parties may be near some  
9 agreement, or suggested a hint of an agreement, but I ask that  
10 you make that very concrete – sufficiently concrete – that it  
11 will provide a basis for the Court to rule on this with a clear  
12 understanding of the nature and extent of Chinese law. Again,  
13 I encourage you to work on that promptly.

14 If you're unable to reach an agreement with respect to  
15 that, a full agreement with respect to that, I'm going to  
16 invite you to reach out to me with a proposal for a modified  
17 schedule to permit the parties to present the relevant  
18 information to the Court regarding the nature and extent of and  
19 effect of foreign law, which I would expect that be through  
20 affidavits, certified translations of the statute and the like.

21 Good. So I'll enter an order to that effect.

22 Counsel, anything else that we need to talk about  
23 here, first, counsel for plaintiff?

24 MR. BURRY: No, thank you, your Honor. We look  
25 forward to submitting our brief. And we're hopeful defendants

M5Q6OWEC

1 can quickly get us a draft stipulation, and we're optimistic  
2 that the parties can stipulate as to what the PIPL provides.

3 THE COURT: Good. Thank you very much.

4 Counsel for defendants, anything from you?

5 MR. HERZINGER: Sorry. Your Honor I didn't mean  
6 Mr. Zwillinger. This is Mr. Herzinger speaking for the record.

7 I just did want to note I actually concur with the  
8 Court whether or not we really are close to an agreement on  
9 China law.

10 And just to give the Court some background,  
11 Mr. Zwillinger mentioned we have both our own PRC counsel  
12 within our firm and China, and also the clients retained  
13 separate PRC counsel, and we had lengthy negotiations and meet  
14 and confers with plaintiffs in this case over the scope of  
15 Chinese law and its meaning as to this case, and we have not  
16 agreed, and I think there are fundamental disagreements.

17 So we absolutely will endeavor, as your Honor has  
18 mentioned, to reach some sort of common ground or stipulation.  
19 But I do believe that it will be important, nevertheless, to  
20 provide information to the Court about our respective  
21 positions, and more importantly, the expert declaration and  
22 information, and not just to Prong 1 of the test, but also as  
23 to the comity factors, because I think it actually bears on  
24 both sets of analyses.

25 So I just wanted to note that for the Court just so

M5Q6OWEC

1 that your Honor was aware that we have had lengthy discussions  
2 about the applicability and the scope and the interpretation of  
3 the statute itself.

4 THE COURT: Good. Thank you very much.

5 Again, I welcome any request to modify the schedule to  
6 permit the parties to present any information that you like  
7 regarding the nature, extent, and effect of Chinese law. The  
8 schedule that we just set really works only if everybody agrees  
9 about all of the nuances of Chinese law. It was not clear to  
10 me that that was necessarily going to happen, so I am very open  
11 to a request to modify the schedule should the parties not be  
12 able to reach full agreement.

13 Very good. Thank you very much. This proceeding is  
14 adjourned.

15 (Adjourned)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25